

# COUNTY OF YORK

## MEMORANDUM

**DATE:** April 18, 2003 (5/6/03 BOS Mtg.)

**TO:** York County Board of Supervisors

**FROM:** James O. McReynolds, County Administrator

**SUBJECT:** Application no. ZT-69-02, York County Board of Supervisors: Proposed Yorktown Historic District Overlay / Yorktown Design Guidelines

This application proposes amending Chapter 24.1, Zoning, of the York County Code to add a new Section 24.1-377, Yorktown Historic District Overlay, and to adopt the companion document setting forth the architectural design guidelines to be applicable within the proposed Yorktown Historic District Overlay. The proposal is being presented for consideration pursuant to the authority provided under Section 15.2-2306 of the Code of Virginia (1950, as amended) relative to preservation of historic sites and architectural areas.

### **Background**

Discussion about historic district zoning and architectural design guidelines in Yorktown dates back to the 1970s, and perhaps even earlier. The current proposal is a product of work initiated in response to the discussion at the first *Focus on Yorktown* workshop in 1989 and the goals established in the Yorktown Master Plan, which was adopted in 1993. A consultant contracted by the County developed the first draft of the proposed ordinance and design guidelines. This initial work product was the basis of the Board's sponsorship of the text amendment application in 1999 and, since that time, it has been undergoing extensive review and study by the Planning Commission. Last year, after conducting an information meeting on the draft, the Planning Commission decided to establish a six-person study committee (3 Yorktown citizens / 3 Planning Commission members) to review the draft document and suggest modifications. This Committee met 14 times over the course of an eight-month period and reviewed the document line-by-line with the objective of shortening, clarifying and simplifying it. The Committee's recommendation was delivered to the Planning Commission at its July 10<sup>th</sup> meeting. The Commission conducted a work session on the proposal on September 23<sup>rd</sup> and an information meeting for Yorktown residents on October 17<sup>th</sup>. The Commission conducted a formal public hearing on the application for its November 13, 2002 meeting and, subsequently, voted to recommend adoption of the amendments. The Board conducted a work session on the Commission's recommended draft on March 4, 2003 and directed that the application be scheduled for formal public hearing and consideration.

### **Considerations**

1. Yorktown has been very fortunate in the past that property owners have chosen to develop and maintain their properties in a manner that is compatible with the historic and architectural character of the village. Certainly, the National Park Service ownership and maintenance of the majority of the historically and architecturally

significant structures has played a large part in this good fortune. However, residents of the village have also, for the most part, recognized and honored an unwritten obligation to be good stewards of Yorktown's unique architectural variety and character. For that reason, many Yorktown residents have asked the following questions:

- ?? Why, given over 300 years of good fortune, do we need architectural review?
- ?? Why are existing regulations not adequate? and,
- ?? Why can't protection objectives be met through private covenants and restrictions?

Staff offers the following observations concerning these questions:

- ?? Simply put, 300 years of good fortune doesn't guarantee the same in the future. Yorktown is a highly desirable residential location and, with the completion of the waterfront improvements and other public infrastructure improvements throughout the village, it will become even more desirable. There are no guarantees that current residents or their families will retain ownership "forever" given future offers that may be made for this highly desirable property. While there are very few undeveloped, privately owned lots<sup>1</sup>, various properties in the village are occupied by aging structures and could be candidates for total redevelopment (i.e., demolition of the existing structure and construction of a new one in its place). This is a trend that is occurring on some of the County's waterfront properties, and it also occurred several years ago in the Moore House Road area. The three new structures on Moore House Road are certainly individually attractive, yet they are quite different than the style and character of the surrounding area. In staff's opinion, various parcels in Yorktown have the potential for redevelopment proposals on the magnitude of the Moore House Road examples, and it is possible under current zoning provisions that similar character departures could occur with that redevelopment.
- ?? Standard zoning regulations address basic issues such as setback, building height, and lot coverage. Although the current YVA District that applies to Yorktown requires Board of Supervisors' approval for any new construction, and requires the submission of plans and renderings of the proposed new construction, the regulations cannot legally be used to require architectural compatibility with the surrounding area. The only opportunity provided under state zoning enabling legislation to do so is through the historic district/architectural review process provided under Section 15.2-2306 of the Code of Virginia. Without the protection afforded by the historic district zoning process, it remains conceivable that something completely out of character with Yorktown could be constructed.

- ?? During the Planning Commission's information meetings, several citizens

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<sup>1</sup> There are nine (9) undeveloped lots located in the residential areas of Yorktown, not including six (6) other vacant townhouse lots in Windmill Point townhouses on Ambler Street and four (4) undeveloped lots in Chischiak Watch. A total of 56 privately owned lots are developed with single-family detached residences. In addition, there are six (6) existing townhouses in Windmill Point and twelve (12) existing cluster homes in Chischiak Watch.

suggested that a better or more acceptable method of meeting the architectural compatibility objective would be private covenants. Various subdivisions in York County are subject to restrictive covenants that were established at the time the lots were created. In some cases, these covenants address architectural issues and some even require approval by a neighborhood review committee that administers a published set of architectural guidelines. Attaching covenants to the existing properties in Yorktown would be possible only if the property owner voluntarily agrees to do so. Even if some might be willing to do so, complete participation throughout the village would be extremely unlikely, and even for those that participate, there would need to be consistency among the covenants and a mechanism for enforcement. In reality, staff is of the opinion that such a system would be impractical and ineffective, even if it were to be established for some properties.

2. There has been considerable concern about the impact of the proposed ordinance on existing properties. It is important to understand that the proposed regulations will not require property owners to bring their existing structures into compliance with the design guidelines. In other words, existing conditions will be “grandfathered” and there will be no “architectural policing” of existing conditions that don’t meet the guidelines. Instead, the proposed regulations and guidelines will apply only to future actions and alterations that property owners may propose. Even then, the proposed regulations allow existing conditions/features to be maintained and repaired in like kind (for example, a purple house could be repainted in the same purple, even though purple is not one of the colors on the approved color palette). In addition, since the Yorktown Historic District is part of the Zoning Ordinance, all normally applicable regulations governing nonconforming structures would apply – meaning that any nonconforming structure destroyed by a cause beyond the control of the owner could be rebuilt to its pre-existing condition (and style, color, etc.) as long as the reconstruction occurs within two (2) years.
3. Concerns have also been raised about the impact of historic district zoning and design review on property values. These comments have suggested that the additional regulations and approval procedures represent a level of restriction that will cause property values to decline. In fact, according to information compiled by the Preservation Alliance of Virginia, property values within Staunton’s historic district increased by about 63% between 1987 and 1995 while properties values outside the historic district increased by only 51%. Similarly, in Fredericksburg, property values inside the historic district increased by 674% between 1971 and 1990 compared to an increase of 410% for properties outside the district. One of the reasons for this is the stability that historic district zoning and design review adds to an area. The process protects properties and investments from the potentially adverse impacts of changes to adjoining properties. It gives property owners confidence that their investments in their property will not be negatively impacted by something totally out of character on an adjacent property.
4. The current draft is quite different from the one initially presented, and the differences are the result of the very thorough review and discussion by the Planning Commission subcommittee. The major changes recommended by the committee include:

- ?? Making the document considerably shorter;
  - ?? Clarifying and simplifying much of the text;
  - ?? Reducing the number of sub-areas from four (4) to two (2) – the **Historic Core** and the **Waterfront**;
  - ?? Eliminating all provisions relating to landscaping;
  - ?? Specifying a *Yorktown color palette* to provide a broad range of color selections that will be considered appropriate and administratively approvable;
  - ?? Providing opportunities for Exempt actions, Administratively Approved actions, and Historic Yorktown Design Committee (HYDC) - Approved actions (see attached summary chart);
  - ?? Providing opportunities for use of a broader range of building materials;
  - ?? Limiting the need for demolition approval to *Pivotal* structures; and
  - ?? Revising the composition of the 5-member HYDC to include: 1 Planning Commission member and at least two (2) other members who are residents of Yorktown (in fact, the other two members of the HYDC could be residents of Yorktown if the Board of Supervisors wishes).
5. The proposed Historic District Ordinance is designed as an “overlay” district, which means that the land uses currently permitted in the YVA – Yorktown Village Activity District will remain the same and the architectural review procedures will supplement those existing provisions. Concerns have been expressed during the information meetings about the regulations becoming an “additional” layer of restrictions in the review process. As the Board is aware, the current YVA regulations provide that all new construction, including single-family detached residences, must be reviewed and approved through the same procedures that are applicable for Special Use Permits. This process, which involves review and public hearing by both the Planning Commission and the Board, takes approximately 90 days. In addition, any proposed addition to a single-family residence requires review and approval by resolution of the Board of Supervisors, which requires approximately 30 days processing time. The requirement for Special Use Permit review for new single-family construction was established by the Board of Supervisors as an interim measure while the design guidelines are under development and review. As such, if the Yorktown Historic District Overlay ordinance and the accompanying design guidelines are adopted, it is my recommendation that the current review/approval process for single family construction or additions be eliminated so that single family construction and additions are allowed as a matter of right, subject only to design/architectural review by the HYDC. Thus, one review process will be substituted for another and, as shown on the attached chart, the timeframe for a decision should be reduced considerably.
6. At the Planning Commission public hearing, several speakers raised concern about the reference in the proposed text amendments to Section 15.2-2306 of the Code of Virginia. Section 15.2-2306 (copy attached) is the basic enabling statute for historic district zoning in the Code of Virginia and, whether or not it is cited in the text of the proposed amendments, it is the legislative foundation on which these proposals are built. The specific concern cited by a few citizens is that mention of Section 15.2-2306 would allow the Board of Supervisors to act to acquire property under the authority of

subsection A.4., which they would not want the Board to do. Subsection A.4. does, in fact, enable the governing body to “acquire in any legal manner” historic landmarks, buildings or structures which it deems are in need of preservation, and to do so by condemnation if such landmark, building or structure is about to be destroyed. However, the County Attorney has opined that the authority enabled by this subsection is available to the County whether or not it has adopted an historic district and architectural design guidelines as allowed under the other provisions of Section 15.2-2306. In other words, adoption of the proposal as recommended by the Planning Commission would give the Board no more/no less authority than it has currently with respect to acquisition of historic properties in need of protection.

### **Planning Commission Recommendation**

The Planning Commission considered this application at a public hearing conducted on November 13, 2002. Subsequent to the public hearing, at which there were nine (9) speakers, the Commission voted 6:0 to recommend approval of the proposed Yorktown Historic District and the accompanying Yorktown Design Guidelines.

### **Recommendation**

The proposed Yorktown Historic District Overlay and the accompanying Yorktown Design Guidelines are the product of an extensive and exhaustive review process. That process, which was led by a Planning Commission/Citizen committee, resulted in numerous changes to the previously prepared consultant draft. The Committee’s recommendations made the documents shorter, easier to read and understand, and considerably more flexible in terms of what is allowable. I share the Planning Commission’s opinion that the Ordinance and Guidelines will serve Yorktown well and, as the Committee stated in its report, I believe they strike an appropriate balance between the public goals of preservation and enhancement of the special character of Yorktown and the private landowner’s desire to avoid excessive and burdensome regulations. Accordingly, and in concert with the Planning Commission, I recommend that the Board of Supervisors approve the proposed amendments.

In accordance with previous discussion, I recommend that the Ordinance be adopted with a delayed effective date – November 1, 2003. This six-month period will provide time for the Board to establish/appoint the Historic Yorktown Design Committee and for that committee to organize, to become familiar with the ordinance and guidelines, to participate in training sessions, and to review and approve various application forms and procedures that will be necessary to administer the design review process. In addition, this six-month period will ensure sufficient time to sponsor and process a text amendment application to revise the YVA District regulations to eliminate the requirement that new single-family detached residential construction and additions be subject to Board of Supervisors approval, with the intent that the effective date of such an amendment would be made to coincide with the effective date for the historic district and design guidelines. In that regard, I have attached proposed Resolution No. R03-78 to sponsor the YVA District text amendment and refer it to the Planning Commission for consideration.

I recommend adoption of proposed Ordinance No. 03-13 and proposed Resolution No.

York County Board of Supervisors

April 18, 2003

Page 6

R03-78.

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Attachment:

- ?? Planning Commission/Citizen Committee report dated July 10, 2002
- ?? Summary of Exempt, Administrative Approval and HYDC Approval
- ?? Comparison of Review Timeframes
- ?? Section 15.2-2306, Code of Virginia
- ?? Excerpts – Planning Commission Minutes - November 13, 2002 meeting
- ?? Proposed Yorktown Historic District and Design Guidelines, dated November 14, 2002
- ?? Proposed Ordinance No. 03-13
- ?? Proposed Resolution No. R03-78